

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Michael S. McManus  
Bankruptcy Judge  
Sacramento, California

**January 27, 2014 at 10:00 a.m.**

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No written opposition has been filed to the following motions set for argument on this calendar:

**5, 6, 10, 14, 15, 20, 21, 22**

When Judge McManus convenes court, he will ask whether anyone wishes to oppose one of these motions. If you wish to oppose the motion, tell Judge McManus there is opposition. Please do not identify yourself or explain the nature of your opposition. If there is opposition, the motion will remain on calendar and Judge McManus will hear from you when he calls the motion for argument.

If there is no opposition, the moving party should inform Judge McManus if it declines to accept the tentative ruling. Do not make your appearance or explain why you do not accept the ruling. If you do not accept the ruling, Judge McManus will hear from you when he calls the motion for argument.

If no one indicates they oppose the motion and if the moving party does not reject the tentative ruling, that ruling will become the final ruling. The motion will not be called for argument and the parties are free to leave (unless they have other matters on the calendar).

**MOTIONS ARE ARRANGED ON THIS CALENDAR IN TWO SEPARATE SECTIONS. A CASE MAY HAVE A MOTION IN EITHER OR BOTH SECTIONS. THE FIRST SECTION INCLUDES ALL MOTIONS THAT WILL BE RESOLVED WITH A HEARING. A TENTATIVE RULING IS GIVEN FOR EACH MOTION. THE SECOND SECTION INCLUDES ALL MOTIONS THAT HAVE BEEN RESOLVED BY THE COURT WITHOUT A HEARING. A FINAL RULING IS GIVEN FOR EACH MOTION. WITHIN EACH SECTION, CASES ARE ORGANIZED BY THE LAST TWO DIGITS OF THE CASE NUMBER.**

**ITEMS WITH TENTATIVE RULINGS: IF A CALENDAR ITEM HAS BEEN SET FOR HEARING BY THE COURT PURSUANT TO AN ORDER TO SHOW CAUSE OR AN ORDER SHORTENING TIME, OR BY A PARTY PURSUANT TO LOCAL BANKRUPTCY RULE 3007-1(c)(1) OR LOCAL BANKRUPTCY RULE 9014-1(f)(1), AND IF ALL PARTIES AGREE WITH THE TENTATIVE RULING, THERE IS NO NEED TO APPEAR FOR ARGUMENT. HOWEVER, IT IS INCUMBENT ON EACH PARTY TO ASCERTAIN WHETHER ALL OTHER PARTIES WILL ACCEPT A RULING AND FOREGO ORAL ARGUMENT. IF A PARTY APPEARS, THE HEARING WILL PROCEED WHETHER OR NOT ALL PARTIES ARE PRESENT. AT THE CONCLUSION OF THE HEARING, THE COURT WILL ANNOUNCE ITS DISPOSITION OF THE ITEM AND IT MAY DIRECT THAT THE TENTATIVE RULING, AS ORIGINALLY WRITTEN OR AS AMENDED BY THE COURT, BE APPENDED TO THE MINUTES OF THE HEARING AS THE COURT'S FINDINGS AND CONCLUSIONS.**

**IF A MOTION OR AN OBJECTION IS SET FOR HEARING BY A PARTY PURSUANT TO LOCAL BANKRUPTCY RULE 3007-1(c)(2) OR LOCAL BANKRUPTCY RULE 9014-1(f)(2), RESPONDENTS WERE NOT REQUIRED TO FILE WRITTEN OPPOSITION TO THE RELIEF REQUESTED. RESPONDENTS MAY APPEAR AT THE HEARING AND RAISE OPPOSITION ORALLY. IF THAT OPPOSITION RAISES A POTENTIALLY MERITORIOUS DEFENSE OR ISSUE, THE COURT WILL GIVE THE RESPONDENT AN OPPORTUNITY TO FILE WRITTEN OPPOSITION AND SET A FINAL HEARING UNLESS THERE IS NO NEED TO DEVELOP THE WRITTEN RECORD FURTHER.**

January 13, 2014 at 10:00 a.m.

**IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON FEBRUARY 24, 2014 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY FEBRUARY 10, 2014, AND ANY REPLY MUST BE FILED AND SERVED BY FEBRUARY 18, 2014. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THESE DATES.**

**ITEMS WITH FINAL RULINGS: THERE WILL BE NO HEARING ON THE ITEMS WITH FINAL RULINGS. INSTEAD, EACH OF THESE ITEMS HAS BEEN DISPOSED OF AS INDICATED IN THE FINAL RULING BELOW. THAT RULING ALSO WILL BE APPENDED TO THE MINUTES. THIS FINAL RULING MAY OR MAY NOT BE A FINAL ADJUDICATION ON THE MERITS. IF ALL PARTIES HAVE AGREED TO A CONTINUANCE OR HAVE RESOLVED THE MATTER BY STIPULATION, THEY MUST ADVISE THE COURTROOM DEPUTY CLERK PRIOR TO HEARING IN ORDER TO DETERMINE WHETHER THE COURT VACATE THE FINAL RULING IN FAVOR OF THE CONTINUANCE OR THE STIPULATED DISPOSITION.**

**ORDERS: UNLESS THE COURT ANNOUNCES THAT IT WILL PREPARE AN ORDER, THE PREVAILING PARTY SHALL LODGE A PROPOSED ORDER WITHIN 14 DAYS OF THE HEARING.**

**MATTERS FOR ARGUMENT**

1. 12-28413-A-7 F. RODGERS CORPORATION MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
LUSARDI CONSTRUCTION CO. VS. 12-31-13 [568]

**Tentative Ruling:** The motion will be granted in part and denied in part.

The movant, Lusardi Construction Co., seeks relief from the automatic stay to proceed with its indemnity, contribution, breach of contract, and breach of warranties claims against the debtor. Recovery will be limited to available insurance coverage.

In addition, the motion asks for the court to annul the stay to ratify post-petition "enforcement actions" taken by the movant.

Given that the movant would not seek to enforce any judgments against the debtor or the estate and will proceed against the debtor only to the extent its claims can be satisfied from the debtor's insurance coverage, the court concludes that cause exists for the granting of prospective relief from the automatic stay. This part of the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to allow the movant to prosecute the claims against the debtor, but not to enforce any judgments against the debtor or the estate other than against available insurance coverage.

On the other hand, the request for annulment of the stay will be denied as the motion does not state what post-petition "enforcement actions" were taken by the movant, when those actions were taken, whether the movant knew of the pending bankruptcy when it took the actions, and when the movant first learned of the instant bankruptcy case.

No fees and costs are awarded because the movant is not an over-secured creditor. See 11 U.S.C. § 506.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived.

2. 13-22913-A-7 CLINTON WILLIAMS MOTION TO  
CBW-3 AVOID JUDICIAL LIEN  
VS. KELKRIS ASSOCIATES 12-23-13 [43]

**Tentative Ruling:** The motion will be conditionally granted.

The proof of service for the amended notice of hearing was filed before the date of service. Dockets 49 & 50. The proof of service was filed on December 27, 2013, whereas the date of service is January 1, 2014. Docket 50. The motion will be granted subject to the debtor filing a proof of service reflecting a service date prior to the date of filing the service.

A judgment was entered against the debtor in favor of Kelkris Associates, Inc. for the sum of \$21,498.93 on February 23, 2011. The abstract of judgment was recorded with San Joaquin County on June 30, 2011. That lien attached to the debtor's residential real property in Lathrop, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of \$188,000 as of the date of the petition. The unavoidable liens total \$266,000 on that same date, consisting of a single mortgage in favor of Bank of America. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code §

703.140(b)(1) in the amount of \$1.00 in Amended Schedule C. Docket 33.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

3. 11-44616-A-7 LOYD/VERNA HOSTETTER MOTION TO  
LBG-1 COMPEL ABANDONMENT  
11-15-13 [37]

**Tentative Ruling:** The motion will be denied.

The debtors are asking the court to order the abandonment of their "post petition self employed income" received from the sublease of a commercial real property in Grass Valley, California the debtors have leased for a term of 35 years. Docket 37.

The trustee opposes the motion.

11 U.S.C. § 554(b) provides that on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

11 U.S.C. § 541(a) provides that "The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

. . .

(6) Proceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case."

While the debtors are collecting \$3,904 a month on account of the sublease, they are paying only \$2,628 a month on account of their lease agreement - a difference of \$1,276 a month. This case was filed on October 14, 2011, meaning that the debtors have collected 27 post-petition payments on account of the sublease agreement. The debtors did not disclose their interest in the lease and sublease agreements until May 1, 2013, when they amended their Schedule G.

The only discussion in the motion about why the subject property should be abandoned is: "The Debtors' sublease is a verbal agreement with no written contract and is not an asset in this case. The lease and sublease are not alienable and not transferrable and the lease has no tangible asset value other than as a revenue stream to the debtor. The Debtors assert that any income received from the sublease since the filing of the petition is not an asset of the estate that can be profitably liquidated by the Trustee over and above the exemptions, if any, in Schedule C as claimed by the Debtors. The Debtors assert that since the sublease income is not an asset of the estate, the trustee cannot demand payment of the sublease income that has been obtained by the debtor since the October 14, 2011 filing of the petition. In fact, because the debtors are self employed in the business of acting as property manager and or landlord, the debtors argue that this was never an asset of the estate to begin with and was fully explored at the time of the original 341."

The debtors have not sufficiently discussed or explained why their interest in the lease and sublease agreements is not property of the estate. Just because the sublease agreement is a verbal agreement does not mean that it is not property of the estate. The debtors have cited no legal authority supporting their position that verbal agreements are not property of the estate. The motion also does not explain why the sublease agreement is not alienable and even if it is why is this relevant.

The debtors have claimed no exemption in the lease and sublease agreements. Dockets 1, 19, 25.

Both the lease and sublease agreements were in existence on the petition date and the court has not been given a probative reason as to why those assets and the monthly net payments are not property of the estate. The debtors have not carried their burden of persuasion in establishing that the assets, including the lease, sublease and net payments, are of inconsequential value or burdensome to the estate. Accordingly, the motion will be denied.

To the extent this motion is challenging the estate's interest in the assets, the court is not determining that interest. Such determination requires an adversary proceeding. See Fed. R. Bankr. P. 7001(2).

4. 11-44616-A-7 LOYD/VERNA HOSTETTER COUNTER MOTION FOR  
DNL-2 TURNOVER  
11-27-13 [42]

**Tentative Ruling:** The counter motion will be granted.

The trustee asks the court to direct the debtors to turn over to the estate all post-petition rents collected from the subleasing of a real property leased by the debtors. The property is in Grass Valley, California. The debtors have been generating approximately \$1,276 a month in net sublease income from the property.

11 U.S.C. § 541(a)(1) provides that property of the estate consists of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 542(a) requires parties holding property of the estate to turn over such property to the estate "and account for, such property or the value of such property."

11 U.S.C. § 542(a) extends beyond the present possession of estate property. It extends to all property in the possession, custody or control during the case. If a debtor demonstrates that he does not have possession of the estate property or its value at the time of the turnover motion, the trustee is entitled to a money judgment for the value of the estate property. Newman v. Schwartzer (In re Newman), 487 B.R. 193, 202 (B.A.P. 9th Cir. 2013).

This case was filed on October 14, 2011. The debtors filed an Amended Schedule G, disclosing their interest in the sublease, only on May 1, 2013, more than 18 months after the petition date, and only after the trustee requested the debtors to file the Amended Schedule G. No exemption has been claimed in the post-petition sublease payments collected by the debtors. The trustee contends that the debtors have collected approximately \$30,624 in net post-petition sublease payments (monthly sublease payments are \$3,904 while monthly lease payments are \$2,628).

The debtors have acknowledged that they have been earning the monthly net sublease income from the property since the petition date. See Docket 39

(referencing "income earned from the date of filing from this sublease"); see also Docket 29, Amended Schedule G (stating that as of the petition "Debtor leases a building from 49er Farm Supply and subleases to another party from which he receives rental income each month"). The debtors' interest in the sublease then was property of the estate when this case was filed. Hence, the net post-petition sublease payments collected by the debtors belong to the estate. As such, the net post-petition sublease payments should be turned over to the estate. The motion will be granted.

5. 13-32127-A-7 LIAN TANG MOTION TO  
CJY-2 AVOID JUDICIAL LIEN  
VS. CHASE BANK USA, N.A. 12-18-13 [18]

**Tentative Ruling:** The motion will be granted in part.

A judgment was entered against the debtor in favor of Chase Bank for the sum of \$13,389.44 on December 3, 2010. The abstract of judgment was recorded with Sacramento County on August 24, 2011. That lien attached to the debtor's residential real property in Sacramento, California.

The motion will be granted in part pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of \$238,955.62 as of the date of the petition. The unavoidable liens total \$217,911.23 on that same date, consisting of a first mortgage in favor of Chase Home Finance for \$169,911.23 and a second mortgage in favor of Sacramento Credit Union for \$48,000. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$21,044.38 in Schedule C.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property.

The sum of the unavoidable liens and the exemption claim is \$238,955.61, leaving \$0.01 in equity available to satisfy the subject judicial lien.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien except for \$0.01. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property to the extent of \$13,389.43 (\$13,389.44 minus \$0.01 of available equity). Its fixing to that extent will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

6. 12-38128-A-7 JANET/FRANCISCO CUBOL MOTION TO  
RLC-1 COMPEL ABANDONMENT  
11-27-13 [105]

**Tentative Ruling:** The motion will be granted.

The hearing on this motion was continued from January 13. The debtors have filed supplemental declaration in support of the motion.

The debtors seek to compel the trustee to abandon the estate's interest in their dental practice, including inventory, equipment, fixtures, account receivables, and a patient list.

11 U.S.C. § 554(b) provides that on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential

value and benefit to the estate.

The dental practice itself requires licensing that is unique to the debtors.

The inventory, equipment, and fixtures have a value of \$12,500 and the receivables have a value of approximately \$20,000. These assets are encumbered by a claim for \$342,527.92 held by CIT Small Business Lending Corporation. The IRS also holds a lien on the assets in the amount of \$18,650.35.

Given the foregoing, to the extent of the assets disclosed by the motion, the court will order abandonment of the dental practice business.

7. 13-32630-A-7 WILLIAM/KATHARINA HEAD MOTION TO  
RWH-1 AVOID JUDICIAL LIEN  
VS. ADDISON AVENUE FEDERAL CREDIT UNION 1-3-14 [19]

**Tentative Ruling:** The motion will be dismissed without prejudice.

The respondent creditor has not been served with the motion. The motion papers were served only on counsel for the respondent, Barry Ferns, who represented the respondent in the state court action against the debtors. Unless the attorney agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).

Also, addressing the service to the attention of the agent for service of process does not transform the respondent's counsel to an agent for service for the respondent.

Finally, the court does not see the respondent's judicial lien on Schedule D.

8. 13-32630-A-7 WILLIAM/KATHARINA HEAD MOTION TO  
RWH-2 AVOID JUDICIAL LIEN  
VS. GCFS 1-3-14 [24]

**Tentative Ruling:** The motion will be denied.

A judgment was entered against the debtor in favor of GCFS, Inc. for the sum of \$16,005.80 on October 16, 2011. The total amount of the lien as of the petition date was \$18,668. The abstract of judgment was recorded with Placer County on November 18, 2011. That lien attached to the debtor's residential real property in Roseville, California.

The debtor is not entitled to relief under 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Amended Schedule A, the subject real property has an approximate value of \$221,000 as of the date of the petition. The unavoidable liens total \$153,402 on that same date, consisting of a single mortgage in favor of Wells Fargo Home Mortgage. Docket 9, Amended Schedule D. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$48,930 in Amended Schedule C.

After taking into account the value of the property, the unavoidable liens and the exemption claim, there is still \$18,668 of equity in the property, available to satisfy the subject lien. Thus, the lien does not impair the debtors' exemption claim. Accordingly, the motion will be denied.

9. 13-33332-A-7 MARINA KONIKOVA

MOTION TO VACATE  
DISMISSAL OF CASE  
1-3-14 [26]

**Tentative Ruling:** The motion will be denied.

The motion has not been served on all creditors. As the motion implicates the dismissal of this case, the court will require the motion to be served on all creditors.

Additionally, the motion is not supported by any evidence, such as a declaration or an affidavit to support the motion's factual assertions. This violates Local Bankruptcy Rule 9014-1(d)(6), which provides: "Every motion shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(e)."

Specifically, the motion says that the debtor did not appear at the meeting of creditors because she did not receive the notice of meeting of creditors. Docket 10. Yet, there is no declaration executed under the penalty of perjury substantiating this factual assertion.

Finally, the court is not persuaded that the debtor did not receive the notice of meeting of creditors. The debtor was served with the notice at the address she herself provided on the petition, 10824 Olson Dr #330, Rancho Cordova, CA 95670. And, the debtor was served at that address with the trustee's motion that resulted in the dismissal of the case. See Dockets 15 & 21. However, the motion does not allege that the debtor did not receive the trustee's dismissal motion.

10. 13-25951-A-7 LINDA/LONNIE ALLISON  
MOH-1

MOTION TO  
COMPEL ABANDONMENT  
1-13-14 [39]

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The debtors seek to compel the trustee to abandon the estate's interest in their real property in Los Molinos, California.

11 U.S.C. § 554(b) provides that on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

The property has a value of \$215,000 according to Schedule A. The encumbrances on the property total approximately \$205,444, consisting of a first mortgage in

favor of Wells Fargo Bank for approximately \$165,490 and a second mortgage in favor of Tri Counties Bank for approximately \$39,954. After accounting for costs of sale in the customary 8% range (\$17,200 based on a \$215,000 valuation), the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

11. 13-31655-A-7 DOROTHY OBANKS MOTION TO  
DCR-1 AVOID JUDICIAL LIEN  
VS. CITIBANK, N.A. 12-10-13 [12]

**Tentative Ruling:** The motion will be denied without prejudice.

The debtor seeks to avoid a judicial lien held by Citibank on her real property in El Dorado Hills, California. A judgment was entered against the debtor in favor of Citibank for the sum of \$3,295.56 on September 20, 2010.

However, the motion will be denied because there is no evidence that the attached abstract of judgment has been recorded. There is no recordation stamp on the attached abstract of judgment.

The debtor then has not established that Citibank holds a judicial lien on the property arising from the subject judgment. The motion will be denied.

12. 13-31655-A-7 DOROTHY OBANKS MOTION TO  
DCR-4 AVOID JUDICIAL LIEN  
VS. CAPITAL ONE BANK 12-10-13 [24]

**Tentative Ruling:** The motion will be denied without prejudice.

The debtor seeks to avoid a judicial lien held by Capital One Bank on her real property in El Dorado Hills, California. A judgment was entered against the debtor in favor of Capital One Bank for the sum of \$10,627.27 on July 30, 2007.

However, the motion will be denied because there is no evidence that the attached abstract of judgment has been recorded. There is no recordation stamp on the attached abstract of judgment.

The debtor then has not established that Capital One Bank holds a judicial lien on the property arising from the subject judgment. The motion will be denied.

13. 13-31655-A-7 DOROTHY OBANKS MOTION TO  
DCR-5 AVOID JUDICIAL LIEN  
VS. DISCOVER BANK 12-10-13 [18]

**Tentative Ruling:** The motion will be denied without prejudice.

The debtor seeks to avoid a judicial lien held by Discover Bank on her real property in El Dorado Hills, California. A judgment was entered against the debtor in favor of Discover Bank for the sum of \$13,618.05 on April 15, 2011.

However, the motion will be denied because there is no evidence that the attached abstract of judgment has been recorded. There is no recordation stamp on the attached abstract of judgment.

The debtor then has not established that Discover Bank holds a judicial lien on the property arising from the subject judgment. The motion will be denied.

14. 13-21157-A-7 KEVIN/JENNIFER PERRINE  
HSM-1

MOTION TO  
EMPLOY AND TO APPROVE COMPENSATION  
FOR TRUSTEE'S ATTORNEY (FEES  
\$4,000)  
12-31-13 [50]

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by the trustee's proposed counsel, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The trustee requests approval to employ Hefner, Stark & Marois as counsel for the estate. HSM will assist the estate with the sale of the estate's assets at an auction with West Auctions and obtaining the approval of compensation for West Auctions. The proposed compensation is a flat fee of \$4,000, inclusive of all out-of-pocket costs. The movant also requests approval of payment of the compensation, without further order of the court.

Subject to court approval, 11 U.S.C. § 327(a) permits a trustee to employ a professional to assist the trustee in the administration of the estate. Such professional must "not hold or represent an interest adverse to the estate, and [must be a] disinterested [person]." 11 U.S.C. § 327(a). 11 U.S.C. § 328(a) allows for such employment "on any reasonable terms and conditions."

The court concludes that the terms of employment and compensation are reasonable. HSM is a disinterested person within the meaning of 11 U.S.C. § 327(a) and does not hold an interest adverse to the estate. The employment will be approved.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses."

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate, upon the completion of the services outlined above. The compensation will be approved.

15. 09-22258-A-7 SATIAN PHONGPITAG  
RDG-1  
VS. NATIONAL CREDIT ACCEPTANCE

MOTION TO  
AVOID JUDICIAL LIEN  
1-6-14 [24]

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the respondent creditor and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no

opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

A judgment was entered against the debtor in favor of National Credit Acceptance, Inc. (now held by SACOR Financial, Inc.) for the sum of \$5,947.05 on October 19, 2007. The abstract of judgment was recorded with Sacramento County on January 29, 2008. That lien attached to the debtor's residential real property located in Sacramento, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of \$85,500 as of the date of the petition. The unavoidable liens total \$148,903.57 on that same date, consisting of a first mortgage in favor of Washington Mutual (now JPMorgan Chase Bank) for \$46,903.57 and a second mortgage in favor of Selective Loan Servicing, Inc. for \$102,000. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$100 in Schedule C.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

16. 09-22258-A-7 SATIAN PHONGPITAG MOTION TO  
RDG-2 AVOID JUDICIAL LIEN  
VS. FEDERATED FINANCIAL CORP. OF AMERICA 1-6-14 [29]

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the respondent creditor and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

A judgment was entered against the debtor in favor of Federated Financial Corporation of America for the sum of \$25,406.58 on August 27, 2007. The abstract of judgment was recorded with Sacramento County on January 31, 2008. That lien attached to the debtor's residential real property located in Sacramento, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of \$85,500 as of the date of the petition. The unavoidable liens total \$148,903.57 on that same date, consisting of a first mortgage in favor of Washington Mutual (now JPMorgan Chase Bank) for \$46,903.57 and a second

mortgage in favor of Selective Loan Servicing, Inc. for \$102,000. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$100 in Schedule C.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

17. 13-31670-A-7 NANCY LAWRENCE MOTION FOR  
MBB-1 RELIEF FROM AUTOMATIC STAY  
BANK OF AMERICA, N.A. VS. 12-20-13 [19]

**Tentative Ruling:** The motion will be dismissed as moot.

The movant, Bank of America, seeks relief from the automatic stay with respect to a 2003 Fleetwood Fifth Wheel vehicle.

11 U.S.C. § 521(a)(2)(A) requires an individual chapter 7 debtor to file a statement of intention with reference to property that secures a debt. The statement must be filed within 30 days of the filing of the petition (or within 30 days of a conversion order, when applicable) or by the date of the meeting of creditors, whichever is earlier. The debtor must disclose in the statement whether he or she intends to retain or surrender the property, whether the property is claimed as exempt, and whether the debtor intends to redeem such property or reaffirm the debt it secures. See 11 U.S.C. § 521(a)(2)(A); Fed. R. Bankr. P. 1019(1)(B).

The petition here was filed on September 5, 2013 and a meeting of creditors was first convened on October 9, 2013. Therefore, a statement of intention that refers to the movant's property and debt was due no later than October 5. The debtor filed a statement of intention on the petition date, indicating an intent to retain the vehicle and reaffirm the debt secured by the vehicle.

11 U.S.C. § 521(a)(2)(B) requires that a chapter 7 individual debtor, within 30 days after the first date set for the meeting of creditors, perform his or her intention with respect to such property.

If the property securing the debt is personal property and an individual chapter 7 debtor fails to file a statement of intention, or fails to indicate in the statement that he or she either will redeem the property or enter into a reaffirmation agreement, or fails to timely surrender, redeem, or reaffirm, the automatic stay is automatically terminated and the property is no longer property of the bankruptcy estate. See 11 U.S.C. § 362(h).

Here, although the debtor indicated an intent to retain the vehicle and reaffirm the debt secured by the vehicle, the debtor has not done so. And, no motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on November 8, 2013, 30 days after the initial meeting of creditors.

The trustee may avoid automatic termination of the automatic stay by filing a motion within whichever of the two 30-day periods set by section 521(a)(2) is applicable, and proving that such property is of consequential value or benefit to the estate. If proven, the court must order appropriate adequate protection of the creditor's interest in its collateral and order the debtor to deliver

possession of the property to the trustee. If not proven, the automatic stay terminates upon the conclusion of the hearing on the trustee's motion. See 11 U.S.C. § 362(h)(2).

The trustee in this case has filed no such motion and the time to do so has expired.

Therefore, without this motion being filed, the automatic stay terminated on November 8, 2013.

Nothing in section 362(h)(1), however, permits the court to issue an order confirming the automatic stay's termination. 11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has terminated under 11 U.S.C. § 362(c). See also 11 U.S.C. § 362(c)(4)(A)(ii). But, this case does not implicate section 362(c). Section 362(h) is applicable and it does not provide for the issuance of an order confirming the termination of the automatic stay. Therefore, if the movant needs a declaration of rights under section 362(h), an adversary proceeding seeking such declaration is necessary. See Fed. R. Bankr. P. 7001.

18.	13-31574-A-7    ROGER/KIMBERLEE ABBOTT BLG-3 VS. HELENA TORRE	MOTION TO AVOID JUDICIAL LIEN 12-3-13 [68]
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**Tentative Ruling:**    The motion will be denied without prejudice.

A judgment was entered against the debtors in favor of Helena Torre for the sum of \$92,082 on May 22, 2013. The abstract of judgment was recorded with Siskiyou County on June 5, 2013. That lien attached to the debtor's residential real property in Yreka, California (613 French Street). The debtor is seeking to avoid the lien as to that property.

The motion will be denied because the sole encumbrance against the property, as identified by the motion, is that of Jefferson Casserly, holding a mortgage in the amount of \$80,000.

However, in Schedule D, the mortgage held by Jefferson Casserly is identified as encumbering 611 French Street and not the subject property - 613 French Street. Docket 1. In other words, the debtors have made inconsistent statements about the collateral for the mortgage held by Jefferson Casserly. The motion will not be granted until this discrepancy is explained.

This is the second time this motion is being denied. When the court denied this motion last time, it specifically called the discrepancies in Schedule D into question. Despite this, the debtors did not amend Schedule D to correct the discrepancies prior to filing this motion.

19.	13-25283-A-7    PATRICK BULMER	MOTION FOR EQUITABLE RELIEF 12-13-13 [89]
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**Tentative Ruling:**    The motion will be denied.

The unsuccessful petitioning creditor in this involuntary bankruptcy case, Paul Den Beste, asks the court:

- to order that Patrick Bulmer return the \$66,001.01 Mr. Bulmer recovered from Mr. Den Beste in Mr. Bulmer's capacity as a state-court appointed receiver;

- to substantially sanction Mr. Bulmer;
- to issue an order to show cause for California State Court Judge Elliot Daum for usurping authority;
- to strike Exhibits A through F; and to vacate "any orders issued."

The court dismissed this involuntary case on July 1, 2013. Dockets 26 & 29. The court also denied a motion to vacate the dismissal on August 30, 2013. Dockets 48 & 51.

Subsequently, in connection with Mr. Bulmer's motion for attorney's fees and costs (DCN SMO-3), the court took up a request by Mr. Den Beste for recusal of Judge McManus. Docket 83. The court denied the request for recusal and proceeded to adjudicate the motion for attorney's fees and costs. In deciding that motion, the court addressed Mr. Den Beste's challenges once again to this court's prior orders, including the order to dismiss this case.

The court will deny this motion for the reasons outlined in the court's ruling on Mr. Den Beste's request for reconsideration as to the dismissal (Docket 48), the court's ruling on Mr. Den Beste's recusal request (Docket 83), and the court's ruling on Mr. Bulmer's motion for attorney's fees and costs (Docket 85), where the court specifically concluded that:

"To the extent Mr. Den Beste challenges the court's findings and conclusions pertaining to the merits of the petition, Mr. Den Beste cannot relitigate those findings and conclusions by the court. They have been litigated by Mr. Den Beste. After dismissal of the petition, he filed a motion to vacate the dismissal, which was denied by the court.

"Mr. Den Beste then filed an appeal from the orders dismissing the petition and denying the motion to vacate. This means that the doctrine of exclusive appellate jurisdiction prevents this court from even reconsidering what it ruled about the merits of this petition in connection with its ruling on the dismissal motion.

"The principle that a timely notice of appeal immediately transfers jurisdiction to the appellate court is a judge-made doctrine that is designed to promote judicial economy and to avoid the confusion and ineptitude resulting when two courts are dealing with the same issue at the same time. *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58, 103 S.Ct. 400, 74 L.Ed.2d 225 (1982); [*Marino v. Classic Auto Refinishing, Inc. (In re Marino)*, 234 B.R. 767, 769 (B.A.P. 9th Cir. 1999)]; 20 JAMES WM. MOORE ET AL., *MOORE'S FEDERAL PRACTICE* paragraph 303.32[1] (3rd ed. 1999). The trial court cannot take actions "over those aspects of the case involved in the appeal." *Griggs*, 459 U.S. at 58, 103 S.Ct. 400.

"The focus is on whether the trial court is being asked to alter the status quo with respect to the appeal. Thus, a trial court cannot enter an order that supplements the order on appeal because such supplementation would change the status quo. *McClatchy Newspapers v. Central Valley Typographical Union*, 686 F.2d 731, 734-35 (9th Cir. 1982).'

*Hill & Sanford, L.L.P. v. Mirzai (In re Mirzai)*, 236 B.R. 8, 10 (B.A.P. 9th Cir. 1999).

"In other words, this court is bound by the findings and conclusions in its

ruling on the dismissal motion. And, the reason this court may proceed with the subject motion by considering its ruling on the dismissal motion, despite the pending appeal, is that Mr. Den Beste has not obtained a stay pending the appeal of the dismissal order."

Docket 85 at 3-4.

The above-mentioned rulings are incorporated here by reference.

To the extent Mr. Den Beste is seeking by this motion the court to vacate the order denying the request for recusal and/or the order granting attorney's fees, costs and sanctions to Mr. Bulmer, the motion will be denied. Dockets 84 & 87.

Mr. Den Beste presents no new bases in law or fact for reconsideration of either of the two orders.

Fed. R. Civ. P. 60(b), as made applicable here by Fed. R. Bankr. P. 9024, allows the court to set aside or reconsider an order or a judgment for:

"(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief."

"A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c).

"Relief under Rule 60(b) is discretionary and is warranted only in exceptional circumstances."

Van Skiver v. United States, 952 F.2d 1241, 1243 (10th Cir. 1991), cert. denied, 506 U.S. 828 (1992).

Mr. Den Beste has not satisfied any basis for relief under Rule 60(b).

The lion's share of this motion discusses the status of Judge McManus with the California State Bar, complains about Mr. Bulmer recovering more funds and property from Mr. Den Beste pursuant to a further state court order obtained on or about December 5, 2013, attempts to relitigate the dismissal of the case, and discusses RICO claims pertaining to Mr. Bulmer, Judge Elliot Daum and other persons.

Mr. Den Beste argues in the motion that this court was wrong in denying the recusal motion because Judge McManus is a member of the California Bar and, as a result, "such membership imputes a loyalty to other State Bar of California members including State Court Judge Elliot Daum."

However, whether or not Judge McManus is a member of the California Bar is not dispositive of the recusal motion. Even if a member of the California State Bar while on the bench, Judge McManus is not required to recuse himself from presiding over this case. If California State Bar membership is basis for recusal, all judges in California would have to recuse themselves from the

cases pending before them. Virtually all judges in California were first lawyers admitted to practice law by the California Bar. In fact, their status as members of the California Bar is for the most part what qualified them to become judges in the first place.

Judge McManus has never met and does not know Judge Daum personally or professionally. Judge McManus gives full faith and credit to orders entered by Judge Daum not because Judge Daum is a member of the Bar but because the United States Supreme Court requires it. "[A] federal court *must give* 'full faith and credit' to state court judgments." Diamond v. Kolcum (In re Diamond), 285 F.3d 822, 829 (9th Cir. 2002) (citing Marrese v. Am. Acad. of Orthopaedic Surgeons, 470 U.S. 373, 380 (1985)).

This court does not have authority or jurisdiction to meddle in the state court litigation. This bankruptcy case has been dismissed and the dismissal order is on appeal. Even if the involuntary petition had been granted, this court would not enter orders reversing or modifying the state court's orders. The fact that Mr. Den Beste has a problem with California State Court Judge Elliot Daum, who appointed Mr. Bulmer as receiver and has entered orders against Mr. Den Beste, must be resolved in the state court system. This court is not the state court of appeal.

Further, as noted above, this court is bound by the findings and conclusions in its ruling on the dismissal motion. The orders on the recusal motion and on the motion for attorney's fees and costs are based on the findings of fact and conclusions of law issued in connection with those motions. After the dismissal and the denial of the motion to reconsider the dismissal, Mr. Den Beste filed his appeal of the dismissal order. Mr. Den Beste has not obtained a stay pending the appeal of the dismissal order.

This motion will be denied.

20.	13-32984-A-7     DONALD/DENISE MALINOFF MHK-5	MOTION TO COMPEL ABANDONMENT 12-30-13 [33]
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**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The debtors seek an order compelling the trustee to abandon the estate's interest in:

- real property in Roseville, California (valued at \$340,000 and subject to \$2,024,691 in claims, including over \$1.9 million in judicial liens and a single mortgage in the amount of \$82,027),
- Golden 1 Credit Union account (128-9) (value of \$10.30),
- Golden 1 Credit Union account (128-0) (value of \$1.00),

- Patelco Credit Union account (750-00) (value of \$1.00),
- Patelco Credit Union account (750-80) (value of \$103.02),
- Patelco Credit Union account (50-10) (value of \$10.99),
- china hutch (value of \$800),
- dining table (value of \$800),
- household goods and furnishings (value of \$10,000),
- sofa (value of \$700),
- men's and women's clothing (value of \$2,000),
- earrings (value of \$1,500),
- necklaces, bracelets, earrings, and miscellaneous costume jewelry (value of \$1,500),
- Canada Life insurance policy (value of \$1,192.90),
- Mony Life insurance policy (value of \$0.00),
- Sun Life Financial insurance policy (value of \$0.00),
- Preferred Trust account (value of \$15,774.31),
- D&M Investments (value of \$0.00), and
- leased 2013 Honda Accord vehicle (3-year lease entered into on August 8, 2013).

The debtors have claimed a \$175,000 exemption in their real property and have exempted in full all other assets, except for the credit union accounts, the Mony Life insurance policy (value of \$0.00), the Sun Life Financial insurance policy (value of \$0.00), and their interest in D&M Investments (value of \$0.00). The credit union accounts are of inconsequential value to the estate (approximate value of \$126). The lease of the 2013 Honda Accord vehicle is also of inconsequential value and burdensome to the estate because the required monthly lease payments are \$303.49. Given the encumbrances against the real property, given the exemption claims, and given the nominal value of the nonexempt assets, the court will order the abandonment of the assets listed in this ruling. The motion will be granted.

21.	13-32984-A-7    DONALD/DENISE MALINOFF MHK-6 VS. HOPKINS & CARLEY	MOTION TO AVOID JUDICIAL LIEN 1-13-14 [52]
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**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the respondent creditor and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

A judgment was entered against Mr. Malinoff in favor of Hopkins & Carley, PC for the sum of \$18,320.50 on December 1, 2011. The abstract of judgment was recorded with Placer County on January 11, 2012. That lien attached to the debtor's residential real property in Roseville, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A).

While pursuant to the debtor's Schedule A the subject real property has an approximate value of \$340,000 as of the date of the petition, Fremont Bank -

one of the other judicial lien holders - has produced an appraisal as of January 4, 2014, valuing the property at \$380,000, in connection with another lien avoidance motion on this calendar (DCN MHK-8). The appraisal is incorporated here by reference. Dockets 74-79.

As the appraisal includes expert testimony supported by a detailed analysis as to the value of the property, whereas the debtors' \$340,000 valuation is based solely on their lay opinion, which in turn is based on a Zillow.com valuation that is inadmissible hearsay and improper to be relied upon by the debtors, the court concludes that the property had a value of \$380,000 as of the petition date, October 4, 2013. See Schedule A; see also Fed. R. Evid. 701, 702, 802. The court does not consider the three-month difference in the petition and appraisal dates to be material in assessing the value of the property or the weight of the appraisal.

The unavoidable liens total \$83,134.36 on that same date, consisting of outstanding property taxes in the amount of \$1,107.09 and a single mortgage in favor of JPMorgan Chase Bank in the amount of \$82,027.27.

The debtors claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3) in the amount of \$175,000 in Schedule C.

Additionally, there are senior judicial liens against the property totaling \$3,297,904.38, consisting of:

- a judicial lien for \$6,457.45, including interest (\$4,418.60 originally per judgment) in favor of Northern California Collection Service, Inc. (abstract recorded May 28, 2009),
- a judicial lien for \$1,494,205.22 in favor of Fremont Bank (abstract recorded December 28, 2010),
- a judicial lien for \$1,797,241.71 in favor of GMAC (abstract recorded August 19, 2011),

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the subject judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

22.	13-32984-A-7     DONALD/DENISE MALINOFF MHK-7 VS. GMAC	MOTION TO AVOID JUDICIAL LIEN 1-13-14 [46]
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**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the respondent creditor and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

A judgment was entered against Mr. Malinoff in favor of GMAC for the sum of \$1,797,241.71 on June 1, 2011. The abstract of judgment was recorded with Placer County on August 19, 2011. That lien attached to the debtor's residential real property in Roseville, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A).

While pursuant to the debtor's Schedule A the subject real property has an approximate value of \$340,000 as of the date of the petition, Fremont Bank - one of the other judicial lien holders - has produced an appraisal as of January 4, 2014, valuing the property at \$380,000, in connection with another lien avoidance motion on this calendar (DCN MHK-8). The appraisal is incorporated here by reference. Dockets 74-79.

As the appraisal includes expert testimony supported by a detailed analysis as to the value of the property, whereas the debtors' \$340,000 valuation is based solely on their lay opinion, which in turn is based on a Zillow.com valuation that is inadmissible hearsay and improper to be relied upon by the debtors, the court concludes that the property had a value of \$380,000 as of the petition date, October 4, 2013. See Schedule A; see also Fed. R. Evid. 701, 702, 802. The court does not consider the three-month difference in the petition and appraisal dates to be material in assessing the value of the property or the weight of the appraisal.

The unavoidable liens total \$83,134.36 on that same date, consisting of outstanding property taxes in the amount of \$1,107.09 and a single mortgage in favor of JPMorgan Chase Bank in the amount of \$82,027.27.

The debtors claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3) in the amount of \$175,000 in Schedule C.

Additionally, there are senior judicial liens against the property totaling \$1,500,662.67, consisting of:

- a judicial lien for \$6,457.45, including interest (\$4,418.60 originally per judgment) in favor of Northern California Collection Service, Inc. (abstract recorded May 28, 2009),
- a judicial lien for \$1,494,205.22 in favor of Fremont Bank (abstract recorded December 28, 2010),

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the subject judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

23.	13-32984-A-7    DONALD/DENISE MALINOFF MHK-8 VS. FREMONT BANK	MOTION TO AVOID JUDICIAL LIEN 1-13-14 [57]
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**Tentative Ruling:**    The motion will be granted in part and denied in part.

A judgment was entered against Mr. Malinoff in favor of Fremont Bank for the sum of \$1,494,205.22 on May 14, 2010. The abstract of judgment was recorded

with Placer County on December 28, 2010. That lien attached to the debtor's residential real property in Roseville, California. The debtors are asking the court avoid the lien except to the extent of \$75,408.20.

Fremont Bank has filed limited opposition to the motion, contending that there should be more than just \$75,408.20 of equity for its lien, given that the property has a value of \$380,000 and not \$340,000.

The motion will be granted in part pursuant to 11 U.S.C. § 522(f)(1)(A).

While pursuant to the debtor's Schedule A the subject real property has an approximate value of \$340,000 as of the date of the petition, Fremont Bank has produced an appraisal as of January 4, 2014, valuing the property at \$380,000.

As the appraisal includes expert testimony supported by a detailed analysis as to the value of the property, whereas the debtors' \$340,000 valuation is based solely on their lay opinion, which in turn is based on a Zillow.com valuation that is inadmissible hearsay and improper to be relied upon by the debtors, the court concludes that the property had a value of \$380,000 as of the petition date, October 4, 2013. See Schedule A; see also Fed. R. Evid. 701, 702, 802. The court does not consider the three-month difference in the petition and appraisal dates to be material in assessing the value of the property or the weight of the appraisal.

The unavoidable liens total \$83,134.36 on that same date, consisting of outstanding property taxes in the amount of \$1,107.09 and a single mortgage in favor of JPMorgan Chase Bank in the amount of \$82,027.27.

The debtors claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3) in the amount of \$175,000 in Schedule C.

Additionally, there are senior judicial liens against the property totaling \$6,457.45, consisting of:

- a judicial lien (including interest) in favor of Northern California Collection Service, Inc. (abstract recorded May 28, 2009).

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is \$115,408.20 in available equity to support Fremont Bank's judicial lien (\$380,000 minus \$83,134.36 in unavoidable liens, \$175,000 exemption claim, and \$6,457.45 of senior judicial liens). Accordingly, there is no equity to support the subject judicial lien except for \$115,408.20. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property to the extent of \$1,378,797.02 (\$1,494,205.22 minus the \$115,408.20 of available equity). Its fixing to that extent will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

24.	13-20898-A-7	CORNEL/TINA VANCEA	MOTION FOR
	KMR-3		RELIEF FROM AUTOMATIC STAY
	FEDERAL NATIONAL MORTGAGE ASSOC. VS.		9-3-13 [79]

**Tentative Ruling:** The motion will be denied in part without prejudice and dismissed in part as moot.

The movant, Federal National Mortgage Association, moves for relief from stay as to a real property in Folsom, California. The movant contends that the

value of the property is \$320,000, whereas the encumbrances total \$365,754.

However, the trustee has filed an opposition, contending that she has received an offer for the purchase of the property in the amount of \$465,000.

Given the trustee's opposition, the motion will be denied as to the estate.

As to the debtors, given the entry of their discharge on August 16, 2013, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtors, the motion will be dismissed as moot.

**FINAL RULINGS BEGIN HERE**

25. 13-33316-A-7 SULMA MARTINEZ MOTION TO  
BLG-1 AVOID JUDICIAL LIEN  
VS. PORTFOLIO RECOVERY ASSOC., L.L.C. 12-17-13 [13]

**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent creditor and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

A judgment was entered against the debtor in favor of Portfolio Recovery Associates, L.L.C., for the sum of \$8,638.98 on May 20, 2013. The abstract of judgment was recorded with Solano County on June 11, 2013. That lien attached to the debtor's residential real property in Vallejo, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of \$144,349 as of the date of the petition. The unavoidable liens total \$267,689.94 on that same date, consisting of a single mortgage in favor of Indymac Mortgage Services. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 in Schedule C.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

26. 13-33316-A-7 SULMA MARTINEZ MOTION TO  
BLG-2 AVOID JUDICIAL LIEN  
VS. PORTFOLIO RECOVERY ASSOC., L.L.C. 12-17-13 [17]

**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent creditor and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

A judgment was entered against the debtor in favor of Portfolio Recovery Associates, L.L.C., for the sum of \$8,186.43 on January 23, 2013. The abstract of judgment was recorded with Solano County on February 19, 2013. That lien

attached to the debtor's residential real property in Vallejo, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of \$144,349 as of the date of the petition. The unavoidable liens total \$267,689.94 on that same date, consisting of a single mortgage in favor of Indymac Mortgage Services. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 in Schedule C.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

27. 13-32127-A-7 LIAN TANG MOTION TO  
CJY-1 AVOID JUDICIAL LIEN  
VS. CHASE BANK USA, N.A. 12-18-13 [12]

**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent creditor and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

A judgment was entered against the debtor in favor of Chase Bank for the sum of \$14,794.63 on February 18, 2011. The abstract of judgment was recorded with Sacramento County on September 19, 2011. That lien attached to the debtor's residential real property in Sacramento, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of \$238,955.62 as of the date of the petition. The unavoidable liens total \$217,911.23 on that same date, consisting of a first mortgage in favor of Chase Home Finance for \$169,911.23 and a second mortgage in favor of Sacramento Credit Union for \$48,000. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$21,044.38 in Schedule C.

In addition, the property is encumbered by a senior judicial lien held by Chase Bank in the amount of \$13,389.44. The abstract of judgment for that lien was recorded with Sacramento County on August 24, 2011, little less than a month prior to the recordation of the instant lien.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

28. 13-33234-A-7 JAIME/AMALIA GOMEZ  
ASW-1  
DEUTSCHE BANK NATIONAL TRUST CO. VS.

MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
12-26-13 [20]

**Final Ruling:** This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Deutsche Bank National Trust Company, seeks relief from the automatic stay as to a real property in Yuba City, California. The property has a value of \$188,000 and it is encumbered by claims totaling approximately \$252,371. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 14, 2013.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will not be waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

29. 13-35735-A-7 KIRAN KAUR

ORDER TO  
SHOW CAUSE  
12-30-13 [11]

**Final Ruling:** This order to show cause was issued because the debtor did not pay the filing fee of \$306. However, the order to show cause will be discharged as moot because the court granted a waiver of the filing fee for the debtor on January 6, 2014. Docket 15.

30. 13-26139-A-7 FRAN/TRISHA PENA  
BRR-1

MOTION TO  
COMPEL ABANDONMENT  
11-27-13 [29]

**Final Ruling:** The motion will be granted.

The debtor moves for abandonment of all property listed in Schedules A and B, except for a \$400,000 annuity. The basis for the motion is that "[t]he trustee has indicated he has no interest in disposing of the estate's interests in these Properties, with the exception of the Debtor's interest in the annuity." Docket 29 ¶ 6.

After the court continued the hearing on this motion from December 30, 2013, in order for the debtors to supplement the record, the debtors filed an amended declaration on January 10, 2014, outlining the property they are seeking abandoned. Docket 38.

The court will grant the motion in that, to the extent of the property specifically disclosed in the amended declaration, the property is of inconsequential value or burdensome to the estate.

As no one other than the debtors appeared at the December 30 hearing on the motion and no one has filed a response to the debtors' amended declaration, the court will not have a hearing on this motion.

31. 13-31655-A-7 DOROTHY OBANKS  
DCR-2  
VS. CACH, L.L.C.

MOTION TO  
AVOID JUDICIAL LIEN  
12-10-13 [30]

**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent creditor and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

A judgment was entered against the debtor in favor of Cach L.L.C. for the sum of \$24,335.82 on June 24, 2009. The abstract of judgment was recorded with El Dorado County on August 10, 2009. That lien attached to the debtor's residential real property located in El Dorado Hills, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of \$275,000 as of the date of the petition. The unavoidable liens total \$122,589 on that same date, consisting of a first mortgage in favor of Nationstar Bank for \$99,903 and a second mortgage in favor of Bank of America for \$22,686. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$152,411 in Schedule C.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A),

there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b) (1) (B).

32. 13-31655-A-7 DOROTHY OBANKS MOTION TO  
DCR-3 AVOID JUDICIAL LIEN  
VS. HERITAGE COMMUNITY CREDIT UNION 12-10-13 [36]

**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (1). The failure of the respondent creditor and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f) (1) (ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

A judgment was entered against the debtor in favor of Heritage Community Credit Union for the sum of \$10,494.29 on June 28, 2006. The abstract of judgment was recorded with El Dorado County on September 8, 2006. That lien attached to the debtor's residential real property located in El Dorado Hills, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f) (1) (A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of \$275,000 as of the date of the petition. The unavoidable liens total \$122,589 on that same date, consisting of a first mortgage in favor of Nationstar Bank for \$99,903 and a second mortgage in favor of Bank of America for \$22,686. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$152,411 in Schedule C.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f) (2) (A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b) (1) (B).

33. 12-33565-A-7 MARK KOLODZIEJ MOTION TO  
BHS-6 APPROVE COMPENSATION OF TRUSTEE'S  
ATTORNEY (FEES \$4,250, EXP.  
\$83.05)  
12-24-13 [56]

**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (1). The failure of the creditors, the debtor, the trustee, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f) (1) (ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The Law Office of Barry Spitzer, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of \$4,250 in fees (reduced from \$6,045) and \$83.05 in expenses, for a total of \$4,303.05. This motion covers the period from August 27, 2012 through December 24, 2013. The court approved the movant's employment as the trustee's attorney on September 12, 2012. In performing its services, the movant charged an hourly rate of \$325.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation, assisting the estate with the sale of the estate's partial interest in a liquor license.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The requested compensation will be approved.

34. 12-33467-A-7 RONALD DUNCAN                      OBJECTION TO  
RLC-2    CLAIM  
VS. KATHLEEN DUNCAN                                      12-13-13 [217]

**Final Ruling:** The hearing on the objection be continued to February 24, 2014 at 10:00 a.m., pursuant to a stipulation between the debtor and the trustee. Docket 237.

35. 13-31574-A-7 ROGER/KIMBERLEE ABBOTT                      MOTION TO  
BLG-4    AVOID JUDICIAL LIEN  
VS. HELENA TORRE    12-3-13 [72]

**Final Ruling:** This motion has been voluntarily dismissed by the movant. Docket 88.

36. 13-35278-A-7 YONG/CHONG MIN                      ORDER TO  
    SHOW CAUSE  
    12-30-13 [18]

**Final Ruling:** The order to show cause will be discharged and the petition will remain pending.

This order to show cause was issued because the debtors did not pay the \$176 filing fee associated with the filing of a motion to abandon on December 3, 2013. As the debtors paid the fee on December 3, 2013, this order to show cause will be discharged.

37. 13-34287-A-7 JOSE/ROSA FIGUEROA                      MOTION FOR  
PD-1    RELIEF FROM AUTOMATIC STAY  
WELLS FARGO BANK, N.A. VS.                                      12-26-13 [25]

**Final Ruling:** This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is

unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to a real property in Woodland, California. The property has a value of \$263,000 and it is encumbered by claims totaling approximately \$263,024.83. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 11, 2013.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will not be waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

38.	13-21291-A-7      JOSEPH/KRISTINE PIRONE	MOTION TO
	SLF-3	APPROVE COMPENSATION OF TRUSTEE'S
		ATTORNEY (FEES \$16,000)
		12-20-13 [52]

**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the trustee, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The Suntag Law Firm, attorney for the trustee, has filed its first and final

motion for approval of compensation. The requested compensation consists of \$16,000, reduced from \$16,070.50 in fees and \$632.45 in expenses. This motion covers the period from April 10, 2013 through the present. The court approved the movant's employment as the trustee's attorney on May 6, 2013. In performing its services, the movant charged hourly rates of \$225, \$250, \$295 and \$315.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) analyzing exemption claims, (2) assessing viability of filing discharge objection, (3) preparing a stipulation for the extension of the deadline to file discharge objections, (4) prosecuting a complaint for the avoidance of the transfer of interest in real property, (5) preparing and recording a lis pendens, (6) negotiating with the owner of the real property in light of a pending sale, (7) reviewing the terms of the pending sale and the claims of the owner about renovation expenses, (8) considering tax implications from the sale, (9) implementing the agreement the debtors had with the transferee for the sale of the property and the dividing of the sales proceeds, (10) reviewing motion to compel abandonment and assessing real property sought to be abandoned, (11) reviewing junior claim on real property, and (12) preparing and filing employment and compensation motions.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The requested compensation will be approved.

39. 13-35295-A-7 KEVIN MCCALED  
PAM-1

MOTION TO  
COMPEL ABANDONMENT  
12-12-13 [11]

**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the trustee, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The debtor requests an order compelling the trustee to abandon the estate's interest in his chiropractic business that is located in Mexico.

11 U.S.C. § 554(b) provides that on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

According to the motion, the business assets include equipment, furnishings and supplies with an aggregate value of \$1,180. See Schedule B, item 28. The assets have been claimed fully exempt in Schedule C. Given the exemption claim, the court concludes that the business, to the extent of the assets

listed in the motion, is of inconsequential value to the estate. The motion will be granted.

40. 12-39297-A-7 GLORIA JUAREZ MOTION TO  
AKH-1 AVOID JUDICIAL LIEN  
VS. ENTERPRISE RENT A CAR COMPANY 12-28-13 [39]

**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent creditor and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

A judgment was entered against the debtor in favor of Enterprise Rent A Car Company for the sum of \$22,295.42 on December 22, 2008. The abstract of judgment was recorded with San Joaquin County on July 1, 2009. That lien attached to the debtor's residential real property in Stockton, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of \$49,000 as of the date of the petition. The unavoidable liens total \$60,000 on that same date, consisting of a first mortgage for \$30,000 in favor of Stockton Mortgage and a second mortgage for \$30,000 in favor of Victor Juarez. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 in Schedule C.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

41. 12-39297-A-7 GLORIA JUAREZ MOTION TO  
AKH-2 AVOID JUDICIAL LIEN  
VS. ALLIANCE UNITED INSURANCE COMPANY 12-28-13 [43]

**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent creditor and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

A judgment was entered against the debtor in favor of Alliance United Insurance

Company for the sum of \$7,785.37 on December 31, 2009. The abstract of judgment was recorded with San Joaquin County on April 30, 2010. That lien attached to the debtor's residential real property in Stockton, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of \$49,000 as of the date of the petition. The unavoidable liens total \$60,000 on that same date, consisting of a first mortgage for \$30,000 in favor of Stockton Mortgage and a second mortgage for \$30,000 in favor of Victor Juarez. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 in Schedule C.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).